

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

RIVERSIDE FARMS, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-06-1329-F
	)	
GENE GREER,	)	
	)	
Defendant.	)	

**ORDER**

Defendant's "First Amended Petition to Vacate Judgment Awarding Fees," filed January 4, 2008, is before the court. (Doc. no. 17.) This document is difficult to follow. Nevertheless, defendant appears pro se, and his pleadings are liberally construed. The court has done its best to understand defendant's arguments and has carefully considered each of those arguments.

The court deems the "first amended petition" a motion. The motion asks the court to vacate its award of attorney's fees to the plaintiff in this action. That award was made under 28 U.S.C. § 1447(c) in conjunction with the remand of this action after the court found this action had been removed from state court without an objectively reasonable basis.

Defendant's original motion to vacate the attorneys' fee award was filed on January 2, 2008, five months after the award of attorneys' fees which occurred on August 2, 2007.<sup>1</sup> Accordingly, Rule 59(e), Fed. R. Civ. P., which allows the court to

---

<sup>1</sup>In order to treat the motion as favorably as possible, the court uses the date of the original motion to vacate for purposes of the timeliness discussion only. The original motion was stricken as moot after defendant filed an amended motion to vacate two days later. (Order at doc. no. 18.)

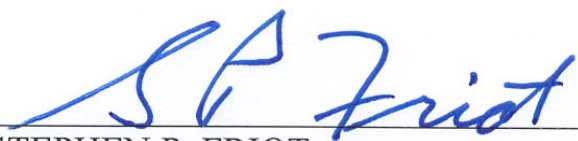
alter or amend a judgment within ten days after the entry of judgment, is unavailable here.

Rule 60, Fed. R. Civ. P., governs relief from judgments or orders. Rule 60(a), however, does not apply because defendant's motion to vacate does not challenge the fee award based on a clerical mistake. Rule 60(c) provides that a motion seeking relief from a judgment under Rule 60(b) "must be made within a reasonable time...." Defendant has offered no explanation for his delay in seeking the relief requested, and the court finds the motion was not made within a reasonable time. Thus, relief is not available under Rule 60.

A motion to reconsider is not provided for in the Federal Rules of Civil Procedure. Such a motion is disfavored. If the motion is nevertheless construed as a motion to reconsider, the motion is untimely and no basis for relief has been shown.

Under any rule or rationale that might potentially support defendant's request for an order vacating the award of attorneys' fees, the court finds and concludes that the request is untimely and lacks merit. "Plaintiff's First Amended Petition [or Motion] to Vacate Judgment Awarding Fees" is **DENIED**.

Dated this 5<sup>th</sup> day of February, 2008.

  
\_\_\_\_\_  
STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE